

Limited Quantity Mark. 172.315

We commend RSPA for allowing immediate application of the limited quantity diamond mark as specified in proposed 49CFR172.315 for international exports as this will facilitate commerce with ADR nations already using this depiction, and be consistent with IMDG 31-02 Chapter 3.4. If RSPA forces a domestic implementation of the limited quantity diamond marking provisions for all US shipments on 1 Oct 2004 this will create a large economic strain to update extensive packaging graphics for limited quantities 3M ships only within the US while probably not providing an increase in measurable safety. Unless risk analysis can demonstrate the safety advantages of imposing the new diamond are significant as compared to the existing US requirements to mark UN number and Proper Shipping Name, we would respectfully request an extension of current limited quantity marking requirements to 1 Oct 2006, or later. After this date, we believe it will not create an economic impact for 3M to offer shipments within the US that align with this globally consistent means of communicating hazardous information on packages containing limited quantities of dangerous goods.

Air eligible mark. Proposed 172.323

We commend the effort by RSPA to improve the communication of critical air safety information concerning eligibility for air shipment of inner packagings of combination packaging containing liquid dangerous goods. We further note that disagreement with RSPAs interpretation and application of the air-eligible mark expressed in comments already submitted on HM-215E concerning the scope of the air eligibility mark proposed in 49CFR172.323 may not be due to deficiency of the preamble discussion and regulatory text as proposed by RSPA but rather due to confusion over the intended scope if the text found at the ICAO 2003-4 regulations concerning the air-eligible mark. Further, we believe that existing text in ICAO would lead reasonable persons to conclude such text means at least three different scenarios, specifically, that the air-eligible mark communicates eligibility (1) of the inner packages of combination packages, (2) the inner packaging and outer package and marking and labeling on the outer package, and/or (3) that the entire package and all applicable regulations such as marking, labeling, classification of the dangerous goods contained in the package, training of persons preparing the shipment, and preparation of shipping papers. It appears the writers of HM-215E believe the intent of the ICAO text most closely aligns with option 3 on the continuum provided as an example above.

We agree with RSPA that current UN combination package certification marking does not communicate capability of inner packaging performance to withstand internal pressure and therefore has not communicated this critical safety data for air shipment required since the ICAO technical instructions first required pressure differential capability, closure and absorbent material requirements, and other items for inner packaging of combination packagings containing liquid dangerous goods. This condition of the regulatory text has posed a palpable information 'gap' that various shippers and competent authorities have attempted to 'close' with various markings applied to UN certified combination packages containing liquid dangerous goods and offered for air shipment.

A US paper presented to the Dangerous Goods Panel (DGP/18-WP/55 10/9/01) commendably attempted to address this gap and other deficiencies regarding the special needs of air shipping combination packages containing liquid dangerous goods. However, a careful review of that paper and the DGP discussion that followed will indicate that the intent of the original US position paper was

greatly broadened by the Dangerous Goods Panel as noted in discussion after the meeting [DGP/18-WP/56 29/10/01 p.2-33]. This expansion of intent was from (1) a clear focus by the US on inner packaging eligibility of combination packaging - exactly filling the gap described above - to (2) text in ICAO Pt5 2.4.12 that may lead a reasonable person to conclude the marking may constitute many things along a continuum that includes a similar or identical declaration/certification of total compliance by the shipper as is already required under ICAO pt5 4.1.12.

Preamble comments by RSPA appear to indicate the writers of HM-215E have interpreted the ICAO text as encompassing just such a similar declaration/certification as expressed in the second option.

[That ICAO now applies the air eligible mark to single packages containing liquid dangerous goods reinforces that the intent expressed by the US in WP-55 was misunderstood or intentionally broadened unnecessarily as there is no information gap that exists with single packages being offered for air shipment - all data required for a carrier to decide if the package is 'air-eligible' is available to a carrier in the forms of markings and labels applied by the shipper on the package, therefore, this too would lead a reasonable person to conclude that the 'air-eligible' mark applied to such packagings must mean more than can be determined from such package markings. ]

This leads to the following comments submitted by this commenter:

Though we would prefer that the air eligible mark communicate only concerning the 'eligibility' of all requirements for inner packaging of a combination package containing liquid dangerous goods,

(1) It appears that the US shipping community has no choice at this point in time but to function under the text from ICAO which RSPA is now incorporating into the HMR and thus, the preamble intent and regulatory text as written by RSPA in HM-215E accurately describes one conclusion a reasonable person would make by interpreting the text. Therefore, under this broad interpretation of declaration/certification by the shipper with all applicable air transport regulations, the air eligible mark may only be placed on a combination package containing liquid dangerous goods by the shipper at the point of offering the shipment because only the shipper at this point of offering can '...certify compliance with all applicable air transport package requirements' [HM-215E p72041] such as classification, training of personnel, packaging, marking labeling, and preparation of shipping papers, etc.

(2) As such, the marking constitutes a redundant certification of compliance with all ICAO requirements which we believe may offer limited increase in safety, and thus, we would suggest the following: That to improve the future edition of the ICAO TIs and thus ultimately the US HMR, the DOT may wish to re-approach the ICAO DGP with either a request to change the text in pt5 ch2.4.12 to clarify the intent is or is not as broad as RSPA has interpreted in HM-215E, or the US may wish to introduce a new paper to the ICAO DGP intended to refocus the air-eligible text on filling the information gap regarding inner packages as the US first commendably attempted.

We wish to state that broadening the information communicated by an air eligible mark from being singularly focused on providing unavailable information about inner packaging eligibility not currently depicted in the UN certification mark to becoming a broad declaration/certification of total regulatory compliance will result in redundancy with the shippers certification, at best, and

confusion around what the mark communicates, at worst. This second scenario may unintentionally lead to offering and acceptance of packages containing liquid dangerous goods which are not suitable for air which is not the intention of any Competent Authority.

Ethylene Oxide.

Ethylene Oxide (EO) UN1040 provisions adopted in 12 th Edition of UN recommendations (<http://hazmat.dot.gov/ac1027ale.pdf> ST/SG/AC.10/27/add.1, page 34 ), Packing Instruction 200 (P200), Subparagraph 'L'(lowercase) for maximum EO mass per metal cartridge of 200grams and maximum EO mass per UN 4G outer packaging of 2.5 kilograms have been omitted without comment in HM-215E. IMDG Code Amdt 31-02, Volume 1, pages 128 and 129 incorporated these provisions voluntarily effective 1January 2003 and mandatory 1 January 2004 in Package Instruction 200 , Subparagraph 'L'(lowercase) under 'Gas Specific Provisions' for UN1040. Consistent with RSPAs stated objective in the summary of HM-215E, we believe that adopting this provision would '...facilitate the transport of hazardous materials in international commerce' while maintaining global safety and harmony. We respectfully request RSPA to adopt these provisions in some form comprehensively under 49CFR173.323, or at a minimum and verbatim under paragraph (b) (2) for 4G fiberboard outer packagings.

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